

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
TOWNSHIP OF CINNAMINSON, NEW)	File No. 0002965857
JERSEY)	
)	
Request for Waiver of Sections 20.9(a)(6), 22.621,)	
22.623(b), and 90.307(d) of the Commission's)	
Rules)	

ORDER

Adopted: June 20, 2011

Released: June 21, 2011

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. The Township of Cinnaminson, New Jersey (Cinnaminson, or the Township) filed an application and associated Waiver Request¹ for authority to use, for public safety purposes, two frequencies allocated under Part 22 of the Commission's rules.² Specifically, Cinnaminson seeks to modify its public safety radio communications system by adding frequencies 506.0125 and 509.0125 MHz. Cinnaminson seeks waiver pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act),³ of Sections 20.9(a)(6), 22.621, 22.623(b), and 90.307(d) of the Commission's rules⁴ "to conduct public safety operations" on frequencies 506.0125 and 509.0125 MHz.⁵ In the alternative, the Township seeks a waiver pursuant to Section 1.925 of the Communication's rules.⁶ By this Order, we grant Cinnaminson's Waiver Request under Section 1.925.

II. BACKGROUND

2. Cinnaminson currently operates Public Safety Pool Station WIL992 on four frequency pairs in the 470-512 MHz Band,⁷ and seeks to modify its license for Station WIL992 by adding Part 22

¹ See File No. 0002965857 (filed Nov. 11, 2007, as amended Aug. 22, 2007, Aug. 23, 2007, Nov. 21, 2007, Jan. 9, 2009, and Jan. 12, 2009), attached Application and Waiver Request ("Waiver Request") (dated Jan. 7, 2009), Technical Analysis (dated Jan. 7, 2009), and SpectrumWatch Auto X Results from the 30-40 MHz, 150-160 MHz, 161-175 MHz, 450-460 MHz, and 460-470 MHz bands (collectively, "AutoX Results" (filed by SpetrumWatch, engineering consulting firm)) (dated Jan. 8, 2009).

² 47 C.F.R. Part 22.

³ 47 U.S.C. § 337(c).

⁴ 47 C.F.R. §§ 20.9(a)(6), 22.621, 22.623(b), 90.307(d).

⁵ Waiver Request at 3.

⁶ 47 C.F.R. § 1.925; see Waiver Request at 1-3.

⁷ Station WIL992 operates on frequency pairs 502/505.9000, 508/511.3000, 508/511.3500, and 508/511.9375 MHz.

frequencies 506.0125 and 509.0125 MHz.⁸ The Township states that “[t]he Cinnaminson Township Department of Law and Public Safety has commenced several initiatives to strengthen response and emergency preparedness” in the aftermath of “the September 11, 2001 attacks as well as preparedness in the event of natural disasters such as hurricanes and floods.”⁹ The Township states that its “infrastructure which includes US, state and interstate highways, passenger and freight rail traffic, maritime traffic on the Delaware River as well as it’s [sic] proximity to the city of Philadelphia present severe challenges in deterring and responding to terror and other emergency circumstances.”¹⁰ Cinnaminson further states that it “works closely with county, state and federal agencies in preparing and implementing a pervasive plan directed toward improving substantially detection and response.”¹¹ Cinnaminson argues that “[t]he request to use UHF frequencies presently designated in the paging services is a critical element of the plan.”¹²

3. The Commission has allocated frequencies in television (TV) Channels 19 and 20 (500-512 MHz) for land mobile radio and paging assignment in the Philadelphia metropolitan area.¹³ However, Cinnaminson contends “the UHF band current resources provide no alternative in the Philadelphia metropolitan area.”¹⁴ The Township further states that “[i]t is for this reason Cinnaminson Township seeks to access the requested Part 22 frequencies”¹⁵ and that “[t]he frequencies will improve substantially the breadth and quality of our agencies interoperability capability.”¹⁶ Cinnaminson states that “[f]requency pair 509/506.0125 MHz will be dedicated to an initiative encompassing the Township of Cinnaminson and allowing counties and cities surrounding Philadelphia and the state capital in Trenton to be able to communicate with our resources through their existing communications resources in the same UHF band.”¹⁷ However, the proposed frequencies are not allocated for public safety land mobile use. Accordingly, Cinnaminson requests a waiver of Sections 20.9(a)(6), 22.621, 22.623(b) and 90.307(d) of the Commission’s rules.¹⁸

⁸ See Waiver Request at 3.

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 3.

¹³ See 47 C.F.R. §§ 22.621, 90.301, 90.303(b).

¹⁴ Waiver Request at 3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 1-2. See also 47 C.F.R. §§ 20.9(a)(6), 22.621, 22.623(b), 90.307(d). Section 20.9(a)(6) provides that these frequencies shall be regulated as a commercial mobile radio service. Section 22.621 sets forth frequencies, some of which are in the 470-512 MHz Band, that are available for point-to-multipoint systems. Section 22.623(b) allows channels listed in § 22.621 to be assigned only individually (unpaired). Section 90.307(d) provides that a land mobile base station that has associated mobile units must be separated from a protected adjacent channel television station by a minimum distance of 145 kilometers (ninety miles).

4. On April 25, 2008, the Public Safety and Homeland Security Bureau issued a Public Notice¹⁹ seeking comment on the application and waiver request, and specifically inquiring whether the 700 MHz public safety band would provide a viable alternative, in light of the approaching digital television transition date (then scheduled to occur on February 17, 2009) and the Commission's recent actions to facilitate a 700 MHz nationwide, interoperable public safety network.²⁰ We received one comment on May 6, 2008 from the Region 28 – 700 MHz Regional Planning Committee (Region 28 RPC).²¹ Region 28 RPC notes that the Commission's 700 MHz regional plan rules require submission of "a detailed description of how the plan put[s] the spectrum to the best possible use by requiring system design with minimum coverage areas, by assigning frequencies so that maximum frequency reuse and offset channel use may be made, by using trunking, and by requiring small entities with minimal requirements to join together in using a single system where possible."²² In this connection, Region 28 RPC notes that Cinnaminson instant proposal "would not use trunking technology or require the town to join small entities with minimal requirements to join together in a single multi-user system."²³ Region 28 RPC "does not believe that the proposed use by the town meets the test of putting the 700 MHz spectrum to the best possible use."²⁴

III. DISCUSSION

5. Section 337(c) of the Act provides that the Commission "shall waive . . . its regulations implementing th[e] Act (other than its regulations regarding harmful interference) to the extent necessary to permit" entities "seeking to provide public safety services" to use unassigned spectrum not allocated to public safety if the Commission makes five specific findings: (i) no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use; (ii) the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations; (iii) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made; (iv) the unassigned frequency

¹⁹ See Public Safety and Homeland Security Bureau Seek Comment on Request for Waiver Filed By the Township of Cinnaminson, New Jersey to Operate a Public Safety Radio System Using UHF Part 22 Point-to-Multipoint Paging Control Frequencies, *Public Notice*, 23 FCC Rcd 6911 (PSHSB 2008).

²⁰ See County of Los Angeles, California, *Order*, 23 FCC Rcd 18389, 18397-98 ¶ 17 (PSHSB 2008). In the DTV Delay Act that was enacted on February 11, 2009, Congress extended the date for the completion of the nationwide DTV transition from February 17, 2009 to June 12, 2009. See DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009). Accordingly, subject to the DTV Delay Act, the Commission extended the analog license terms and adjusted the construction permits for the full power television stations on February 13, 2009. See Implementation of the DTV Delay Act, *Report and Order and Sua Sponte Order on Reconsideration*, MB Docket No. 09-17, 24 FCC Rcd 1607 (2009).

²¹ See Region 28 – 700 MHz Regional Planning Committee Comment dated May 6, 2008 (Region 28 RPC Comments). Region 28 includes southern New Jersey, in which Cinnaminson is located. See <http://publicsafety.fcc.gov/pshs/public-safety-spectrum/700-MHz/rpc-map.htm?region=Region%2028> (last visited May 4, 2011).

²² Region 28 RPC Comments at 4, *citing* 47 C.F.R. § 90.527(a)(6).

²³ Region 28 RPC Comments at 4.

²⁴ *Id.*

was allocated for its present use not less than two years prior to the date on which the application is granted; and (v) granting such application is consistent with the public interest.²⁵

6. When considering requests under Section 337(c) of the Act, we must first determine whether the applicant is “an entity seeking to provide public safety services.”²⁶ Section 337(f) defines the term “public safety services” as “services— (A) the sole or principal purpose of which is to protect the safety of life, health, or property; (B) that are provided—(i) by State or local government entities; or (ii) by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider.”²⁷ Cinnaminson is a local government entity that seeks “to strengthen public safety response and emergency preparedness” by “affording public safety agencies with more pervasive interoperable wireless communications capability” in order “to enhance incident command communications, improve coordination and leverage the existing communications infrastructure.”²⁸ Accordingly, based on the record, we conclude that Cinnaminson is an entity providing public safety services.

7. Next, we consider whether Cinnaminson’s request satisfies the specific showing requirements mandated by Section 337(c) of the Act. We note that an applicant’s failure to meet any one of the five criteria constitutes sufficient cause for the Commission to deny a request for waiver under Section 337(c).²⁹

8. Initially, we consider whether “no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use,” pursuant to subsection 337(c)(1)(A).³⁰ With regard to this prong, the Township contends that no public safety spectrum is immediately available.³¹ Cinnaminson makes the following observations:

- There are no available frequencies in the 30-50 MHz, 150-174 MHz and 220 MHz bands that meet the channel requirement. This assessment is supported by FCC-certified public safety frequency coordinator IMSA, the International Municipal Signal Association.³²
- The 450-466 MHz and 470-480 MHz bands contain 6.25 kHz bandwidth channels, but these frequencies are not available because no manufacturer provides equipment for this

²⁵ 47 U.S.C. § 337(c).

²⁶ 47 U.S.C. § 337(f).

²⁷ *Id.*

²⁸ Waiver Request at 3.

²⁹ See South Bay Regional Public Communications Authority, *Memorandum Opinion and Order*, 13 FCC Rcd 23781, 23796 ¶ 33 (1998) (*South Bay*). Township of Cinnaminson, New Jersey, *Order*, 22 FCC Rcd 4583, 4585 ¶ 6 (PSHSB 2007) (*Cinnaminson*), citing University of Southern California, *Memorandum Opinion and Order*, 16 FCC Rcd 2978, 2984 ¶ 15 (WTB PSPWD 2001). See also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as amended, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, 15 FCC Rcd 22709, 22768-69 ¶ 131 (2000) (footnotes omitted).

³⁰ 47 U.S.C. § 337(c)(1)(A).

³¹ Waiver Request at 3.

³² See File No. 0002965857, attached Memorandum from IMSA to David Seal [sic], Attorney, Policy Division, Public Safety and Homeland Security Bureau (Aug. 22, 2007). See also Memorandum from IMSA to Tom Eng, Electronics Engineer, Policy Division, Public Safety and Homeland Security Bureau (Jan. 8, 2009).

narrow bandwidth. The analysis further states these channels cannot be coordinated due to the close proximity of existing co- or adjacent channel users;

- The 806-821/851-866 MHz bands do not have unassigned land mobile channels;
- The 764-776 and 794-806 MHz bands, while designated for public safety use, are not immediately available for Cinnaminson because of existing television broadcast stations.³³

9. Based on our review of the record, we find that Cinnaminson has not demonstrated that “no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use,” pursuant to subsection 337(c)(1)(A).³⁴ With respect to the availability of 700 MHz band, Cinnaminson asserts that “immediate use of this band is prohibited by current TV stations licensed and in operation.”³⁵ However, broadcasters have vacated the 700 MHz band as a result of the June 12, 2009 conclusion of the DTV transition. Therefore, we do not find Cinnaminson’s argument regarding existing television stations persuasive. Further, the Commission has approved the Region 28 700 MHz Plan, which includes spectrum provisions for Cinnaminson’s County of Burlington.³⁶ Region 28 RPC argues that the 700 MHz public safety band would not provide a viable alternative for Cinnaminson because certain characteristics of Cinnaminson’s proposed operation would not put 700 MHz spectrum to the best possible use.³⁷ However, we observe that the 700 MHz narrowband public safety frequencies designated by the Region 28 700 MHz Plan for Burlington County are unlicensed at this time. However, we find that Region 28’s suggestion that these channels should be held in reserve for some unspecified future use pursuant to its Regional Plan does not render them unavailable for purposes of our analysis under Section 337. There are sufficient 700 MHz channels for Cinnaminson’s purposes that are unassigned, such that Section 337 compels us to consider the 700 MHz public safety channels to be immediately available and ready for assignment.³⁸

10. Because Cinnaminson has failed to satisfy one of the five criteria; specifically, that “no other spectrum allocated to public safety services is immediately available to satisfy the requested public

³³ See Waiver Request at 4-5. See also AutoX Results.

³⁴ 47 U.S.C. § 337(c)(1)(A).

³⁵ Waiver Request at 4.

³⁶ See Public Safety and Homeland Security approves Region 28 (Delaware, Southern New Jersey and Eastern Pennsylvania) 700 MHz Regional Plan, WT Docket No. 02-378, *Public Notice*, 24 FCC Rcd 12001 (2009).

³⁷ See *supra* para. 4; Region 28 RPC Comments.

³⁸ We have considered 700 MHz band narrowband frequencies to be “available” to a particular public safety applicant if the Commission has approved the associated 700 MHz regional plan; the applicant could protect TV stations pursuant to Section 90.545 of the Commission’s rules, 47 C.F.R. § 90.545; and the frequencies are not already assigned to another public safety entity. Before and during the DTV transition, in most urban areas, there were TV stations that blocked public safety use of the 700 MHz band. The DTV transition cleared all full power TV stations out of the 700 MHz band, meaning Section 90.545 protection generally is no longer an issue. Thus, as of June 12, 2009, we have considered 700 MHz band narrowband frequencies to be “available” in a given region upon Commission approval of the associated regional plan. The Commission’s online 700 MHz Regional Planning Interactive Map shows the status of each regional plan. See <http://publicsafety.fcc.gov/pshs/public-safety-spectrum/700-MHz/rpc-map.htm>.

safety service use,” we need not and do not address its arguments regarding the remaining four criteria.³⁹ Thus we find that Cinnaminson does not satisfy the first criterion of Section 337(c), and therefore Cinnaminson cannot obtain waiver relief pursuant to Section 337.

11. However, our finding that Cinnaminson does not warrant waiver relief under Section 337 does not foreclose our consideration of Cinnaminson’s alternative request for waiver relief under Section 1.925 of the Commission’s rules.⁴⁰ Section 1.925 provides the Commission the necessary flexibility to achieve its statutory objective of safeguarding life and property by considering an applicant’s request for waiver relief according to the standards that an applicant must meet under the rule.⁴¹ From our review of the record in this case, we find that, despite its failure to meet the first criterion for receiving Section 337 waiver relief, Cinnaminson has presented sufficient information for us to consider whether waiver relief is justified under Section 1.925.

12. Section 1.925 of the Commission’s rules provides that to obtain a waiver of the Commission’s rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;⁴² or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁴³ Applicants seeking a waiver face a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.⁴⁴ Based on the information before us, we conclude that a grant of Cinnaminson’s Waiver Request is warranted under the first prong of the waiver standard. We proceed with analyses of each rule for which Cinnaminson requests waiver.

13. *Section 22.621.* The underlying purpose of Section 22.621 is to reserve certain frequencies “for assignment to transmitters utilized within point-to-multipoint systems that support transmitters that provide public mobile service.”⁴⁵ Cinnaminson states that “[t]he frequencies comprising

³⁹ See, e.g., Hennepin County, *Order*, 14 FCC Rcd 19418 (WTB 1999) (having noted failure of Hennepin County to meet one of the criteria, the Wireless Telecommunications Bureau did not address remainder); New Hampshire Department of Transportation (NHDOT), *Memorandum Opinion and Order*, 14 FCC Rcd 19438, 19442 (WTB 1999) (after having determined that New Hampshire failed to demonstrate that no other spectrum allocated to public safety service was immediately available, the Wireless Telecommunications Bureau noted that it “need not address whether NHDOT has submitted evidence that would allow us to make the other findings required by Section 337(c)(1) of the Act.”).

⁴⁰ See County of Ocean, New Jersey, *Order*, 24 FCC Rcd 11299, 11305 ¶ 16 (PSHSB PD 2009); *Balanced Budget Act Report and Order* at 22769 ¶ 132 n.366, citing 47 C.F.R. § 1.925. See also Letter to Alan S. Tilles, Esq., 22 FCC Rcd 13577, 13581 & n.30 (WTB MD 2007) (noting that “[i]n addition to the Section 337 process, [public safety] entities can also seek a conventional waiver under Section 1.925 of rules.”); see also 47 U.S.C. §§ 151, 154(i), 303(r).

⁴¹ See 47 C.F.R. 1.925 (providing that “[t]he Commission *may* waive specific requirements of the rules upon its own motion or upon request”) (emphasis added). See 47 C.F.R. § 1.925(b)(3)(i)-(ii) (setting forth the criteria).

⁴² 47 C.F.R. § 1.925(b)(3)(i).

⁴³ 47 C.F.R. § 1.925(b)(3)(ii).

⁴⁴ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

⁴⁵ 47 C.F.R. § 22.621.

the channels that have been identified in this application are not currently licensed to any for Point to Multipoint operation.”⁴⁶ Our review of the Commission’s licensing records confirms that the requested frequencies are unused in the Philadelphia area. Specifically, we find that no Part 22 common carrier operations are licensed on the requested frequencies nor is an auction of the frequencies listed in Section 22.621 either imminent or pending.⁴⁷

14. While we have recognized that, as a matter of policy, the Commission would typically assign a point-to-multipoint channel listed under Section 22.621 to a Part 22 applicant if that channel was previously unoccupied in that urban area,⁴⁸ we find that, in the instant case, continuing to let the requested frequencies remain unassigned is not in the public interest. We find that the public interest served by Cinnaminson’s proposal for the unused frequencies, as further addressed below, entails substantial public safety benefits for preserving the life and property of the Township’s population that outweigh reserving the specific frequencies for Part 22 use.⁴⁹ We therefore conclude that the underlying purpose of Section 22.621 would not be served or would be frustrated by granting a waiver in the present case. As an ancillary matter, our database search also verified that there are no incumbent private land mobile radio (PLMR) licensees on the same frequencies and adjacent frequencies in need of consideration.

15. *Protection of Incumbent TV Stations (Section 90.307)*. The Township requests waiver of the TV distance separation in Section 90.307(d),⁵⁰ because its proposed frequencies, which are in the 470-512 MHz band, “is operated on a geographically shared basis with Television Broadcasting Stations, in this case channel 20.”⁵¹ The purpose of these rules is to protect reception of TV broadcasts from PLMR interference. Frequencies in the TV Channel 19 band are allocated for land mobile and paging use in the Philadelphia urbanized area.⁵² Cinnaminson submitted a technical analysis report stating that “[t]here are no relevant adjacent broadcast television channels [to be considered] other than channel 21, WLIW.”⁵³ Under Section 90.307(d), the minimum distance between a land mobile base station which has associated mobile units and a protected adjacent channel television station is 145 km (90 miles).⁵⁴ Cinnaminson states that “the distance between the two transmitter sites is 157.5 km or 97.9 miles ... [which is] 12.5 km

⁴⁶ Technical Analysis at 2.

⁴⁷ The Commission’s Wireless Telecommunications Bureau has not announced an auction for Section 22.621 frequencies, unlike other Part 22 spectrum.

⁴⁸ See County of Morris, New Jersey, *Order*, 24 FCC Rcd 12492, 12496-97 ¶ 13 n.51 (PSHSB PD 2009).

⁴⁹ See Gateway Telecom LLC, *Order*, 22 FCC Rcd 15789, 15795 ¶ 13 (2007) (finding that “no current licensee that would be negatively impacted by granting a waiver” and that “if a waiver is denied, . . . frequencies will be unassigned until the Commission makes the spectrum available through auctions or other means.”). Cf. Fresno City and County Housing Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998, 11001 ¶ 9 (WTB PSPWD 2000) (weighing the competing public interests and finding that waiver proponent did not demonstrate that the public interest in not allowing a channel temporarily be unassigned outweighed the public interest in fairness of application process).

⁵⁰ See Waiver Request at 3.

⁵¹ *Id.* at 5. Frequencies in the 470-512 MHz band, normally assigned to UHF Television channels 14 through 20, were made available for land mobile radio use in 11 cities in the early 1970s in the “UHF-TV Sharing” proceeding. See Land Mobile Use of TV Channels 14 through 20, Docket No. 18261, *Report and Order*, 23 FCC 2d 325 (1970).

⁵² See 47 C.F.R. §§ 90.303, 22.621.

⁵³ Technical Analysis at 1.

⁵⁴ See 47 C.F.R. § 90.307(d).

or 7.9 miles in excess of the adjacent channel requirement.” As a result, the Township states that they “do not anticipate that that the proposed station will cause interference to adjacent channel user WLIW.”⁵⁵ We agree and find that because Cinnaminson’s distance from Station WLIW exceeds 145 kilometers, a waiver of Section 90.307(d) is not necessary. We have verified Cinnaminson’s report and conclude that there are no nearby TV stations on TV channel 20 or the adjacent TV channel 19 that are entitled to interference protection. Cinnaminson also states that its “analysis indicates that the Township of Cinnaminson, New Jersey’s proposed operations will be within the parameters of the Commission’s rules, sections 90.307 and 90.309.”⁵⁶ Cinnaminson further states that “[t]he spacing that will encompass the proposed interoperability channel to all of the TV transmitters on channels 19, 20 and 21 meet both the co-channel and adjacent-channel spacing requirement.”⁵⁷ Finally, Cinnaminson’s review indicates that “no harm will accrue adjacent users entitled to protection.”⁵⁸ We have verified Cinnaminson’s findings, and conclude that the Township’s proposed operations would cause harmful interference neither to incumbent co-channel nor adjacent channel TV station licensees.

16. *Public Interest.* Based upon the record in this proceeding, we believe Cinnaminson’s filings demonstrate that access to additional spectrum is needed in order to promote effective public safety communications. Cinnaminson states that “[t]he public interest will be served by the tangible enhancements the Commission’s action will have on the public’s health and safety.”⁵⁹ In addition, Cinnaminson states that “[i]ts application to the Commission is part of a pervasive and comprehensive initiative to confront the need to make substantial improvement in security and overall preparedness to prevent, respond to and mitigate terrorist incidents and natural disasters.”⁶⁰ We believe that it would further the public interest by affording Cinnaminson’s public safety community the necessary spectrum to allow it to safely protect the lives and property in its care. Accordingly, we find it significant that granting the instant request will promote interoperability capability among the public safety community in the Philadelphia metropolitan area.⁶¹ Finally, notwithstanding the availability of 700 MHz band spectrum, the public interest would be served by granting Cinnaminson use of the requested frequency pair because that frequency pair, unlike any frequencies in the 700 MHz band, is compatible with Cinnaminson’s existing system operating in the 470-512 MHz Band. We therefore conclude that granting the application is consistent with the public interest.

17. *Section 20.9(a)(6).* This rule presumes that the proposed frequencies will be treated as common carriage services and regulated as commercial mobile radio services.⁶² This regulatory structure is not applicable to, or appropriate for, frequencies used for public safety purposes. Because we find that it is in the public interest to allow Cinnaminson to use frequencies 506.0125 and 509.0125 MHz for public safety purposes, we conclude that the underlying purpose of Section 20.9(a)(6) would not be served by its application to the present case.

⁵⁵ Technical Analysis at 2.

⁵⁶ *Id.*

⁵⁷ Waiver Request at 5.

⁵⁸ *Id.*

⁵⁹ *Id.* at 6.

⁶⁰ *Id.*

⁶¹ *See id.* at 3-4.

⁶² *See* 47 C.F.R. § 20.9(a)(6).

18. *Section 22.623(b)*. This rule requires that the channels may be assigned in an unpaired configuration only to control base stations in the public mobile service. These requirements include that the “channels may be assigned only individually (unpaired)” and that “[f]ixed relay transmitters are not authorized.”⁶³ Since Cinnaminson would not operate in the public mobile service, and since public safety communications systems typically use frequencies in pairs for base and mobile operations, this rule is not applicable to, or appropriate for, frequencies used for public safety purposes. Because we find that it is in the public interest to allow Cinnaminson to use frequencies 506.0125 and 509.0125 MHz for public safety purposes, we conclude that the underlying purpose of Section 22.623(b) would not be served by its application to the present case.

19. Lastly, in concluding that granting waiver relief to Cinnaminson is consistent with the public interest, we also observe that the Commission has begun examining ways to repurpose TV bands, such as the 470-512 MHz band,⁶⁴ for flexible use, including commercial mobile broadband. For instance, the National Broadband Plan has recommended that the Commission consider freeing up spectrum for commercial broadband use by using such mechanisms as voluntary incentive auctions,⁶⁵ and the Commission has taken its first steps toward this possibility with allocation proposals that would accommodate such use.⁶⁶ While, at this time, we conclude that granting Cinnaminson waiver relief will not compromise the Commission’s ability to act (and flexibility in acting) on the recommendations of the National Broadband Plan and related initiatives for repurposing part of the TV bands for flexible use, we note that our consideration of the public interest in analyzing waiver requests on a case-by-case basis requires that we carefully consider any action that would disrupt or hamper the Commission’s ability to identify and maximize the use of available spectrum. As the Commission takes steps to further broadband spectrum initiatives, it is likely that additional waiver requests for public safety use of spectrum currently allocated for the TV broadcast service will have different and more significant effects on Commission plans for this spectrum, and that it will accordingly become much more difficult to conclude that such waivers would, on the whole, serve the public interest. We therefore strongly urge public safety entities contemplating future waivers for TV and other non-public safety spectrum to consider use of the 700 MHz band to promote such goals as nationwide interoperability, consistent with the public interest.

IV. CONCLUSION

20. Based on the foregoing, we conclude that, although Cinnaminson has not made the requisite showing under Section 337(c) of the Act for a waiver of the Commission’s rules, it has made a sufficient showing for granting its requested waiver under the first prong of Section 1.925 of the

⁶³ See 47 C.F.R. § 22.623(b).

⁶⁴ The 470-512 MHz band segment in which Cinnaminson seeks to use Part 22 frequencies is one of five bands currently allocated principally to broadcast television under Part 73 of the rules. See 47 C.F.R. Part 73. Specifically, the 470-512 MHz band is allocated for fixed and land mobile services on a co-primary basis with broadcasting. See 47 C.F.R. § 2.106, footnote NG66.

⁶⁵ See FED. COMMUNICATIONS COMM’N, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN at 88-93 (2010).

⁶⁶ See Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, ET Docket No. 10-235, *Notice of Proposed Rulemaking*, 25 FCC Rcd 16498 (2010) (proposing, *inter alia*, to expand allocations for primary operations in TV bands to include fixed and mobile services, as one of the “preliminary steps to enable the repurposing of a portion of the UHF and VHF frequency bands that are currently used by the broadcast television service, which in later actions we expect to make available for flexible use by fixed and mobile wireless communications services, including mobile broadband.”).

Commission's rules. We therefore grant Cinnaminson a waiver of Sections 20.9(a)(6), 22.621, and 22.623(b) to permit Cinnaminson to upgrade its public safety communications system and on the requested two Part 22 frequencies in the 470-512 MHz band.⁶⁷

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED pursuant to Section 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c), that the Request for Waiver, as amended, associated with File No. 0002965857 filed by the Township of Cinnaminson, New Jersey IS DENIED to the extent that Cinnaminson Township seeks relief under Section 337(c) of the Act.

22. IT IS FURTHER ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3) of the Commission's rules, 47 C.F.R. § 1.925(b)(3), that the Request for Waiver, as amended, associated with File No. 0002965857 filed by the Township of Cinnaminson, New Jersey IS GRANTED, to the extent indicated herein.

23. IT IS FURTHER ORDERED that File No. 0002965857 SHALL BE PROCESSED consistent with this *Order* and the Commission's rules.

24. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

⁶⁷ As we noted above, a waiver of Section 90.307(d) is not necessary. *See supra para. 15.*